IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Writ Petition No.26199 of 2007

M/s. Aringnar Anna Kudisai
Nalvalvu Sangam rep. by K.Rajendiran
Executive Member/Authorised Signatory
No.59, Anna Nagar, S.No.136/2
Nandambakkam, Chennai 600 009. .. Petitioner

Vs.

1. The District Collector
Kanchipuram, Kanchipuram District.

2. The Tahsildar
Tambaram Taluk
Kanchipuram District.

3. The Executive Officer
Nandambakkam Town Panchayat
Kanchipuram District. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Mandamus as stated therein.

For Petitioner : Mr.C.V.Illangovan
For Respondents: Mr.K.Elango
Spl. Govt. Pleader for RR1 & 2
Mr.Rajakalifulla for $-3

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O R D E R
(Made by P.D.DINAKARAN,J.)

The writ petitioner Sangam seeks a writ of Mandamus forbearing the respondents from evicting the members of their association in Survey No.136/2, Nandambakka, Chennai 89, Kanchipuram District, without following the procedure under the Land Encroachment Act and against the decree dated 11.2.2002 made in O.S.No.1479 of 1997 on the file of the learned District Munsif cum Judicial Magistrate, Alandur.

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2. Mr.K.Elango, learned Special Government Pleader submits that the respondents could not issue eviction notice under the Land Encroachment Act, as the petitioner has moved this Court and obtained an order of status quo.

3. Admittedly, the members of the petitioner Sangam are encroachers. Even though there is an order of permanent injunction granted by the learned District Munsif cum Judicial Magistrate, Alandur in O.S.No.1479 of 1997, since the petitioners are admittedly encroachers, the said decree will not give them a blanket right against the eviction proceedings by the competent authority, resorting to the relevant statute.

4. That apart, it is a settled law that removal of encroachment needs urgent action. What requires to be done by the competent authority is to ensure constant vigil on encroachment of the public place. If the encroachment is of a recent origin, the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Municipal Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Therefore, giving a fair and reasonable opportunity in the matter of eviction of encroachers, assuming the same is protected under any prescribed statute, must be a pragmatic and realistic one to meet the given fact situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. (vide AHMEDABAD MUNICIPAL CORPORATION v. NAWAB KHAN GULAB KHAN reported in AIR 1997 SC 152)

5. Again, in SEKHAR v. MALLIGARJUNA RAO [(2000) 3 MLJ 123)], a Division Bench of this Court has held as follows:

> " ... Mere possession on the public land will not give any right to the appellants to give any indulgence from this Court, when admittedly, the disputed land is a public land. So far as the other point that whether the writ petitioner has any right over the property is concerned, the same cannot be challenged at this stage for want of any legal right. That apart, this being a question of fact, it cannot be gone into at this stage. ... This

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Court is of the firm view that the wrong doers cannot seek indulgence, nor this Court will issue direction to perpetuate the illegality in exercising the power under Article 26 of the Constitution. ... "

6. Under the facts and circumstances of the case, the petitioner being an encroacher, has no right to seek a Mandamus as prayed for. However, the respondents are directed to issue statutory notice and then proceed with summary eviction, after giving a reasonable opportunity to him, as observed by the Apex Court in the above decision invoking their powers under the relevant statute. Till then, there shall be an order of status quo.

The writ petition is disposed of accordingly. No costs. Consequently, M.P.No.1 of 2007 is closed.

kpl

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Collector
   Kanchipuram, Kanchipuram District.

2. The Tahsildar
   Tambaram Taluk
   Kanchipuram District.

3. The Executive Officer
   Nandambakkam Town Panchayat
   Kanchipuram District.

+1 cc to Mr.C.V.Ilangovan, Advocate Sr.No.66889.

RSN(CO)
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